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6 WELLS FARGO BANK, N.A.,  
7 dba WELLS FARGO DEALER SERVICES

8 UNITED STATES BANKRUPTCY COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 In Re: Case No. 15-10233-B-13

11 PEDRO NAVEIRAS, JR. and D.C. No. APN-1  
12 ZENAIDA ALICIA NAVEIRAS,

13 Debtors.

MOTION BY SECURED CREDITOR,  
WELLS FARGO BANK, N.A., DBA  
WELLS FARGO DEALER SERVICES,  
FOR RELIEF FROM AUTOMATIC STAY  
RE: 2012 TOYOTA COROLLA, (V.I.N.  
JTDBU4EEXC9170391), [11 U.S.C. §  
362(d)(1) and Local Rule 4001-1, Local  
Rule 9014-1]

14 \_\_\_\_\_/  
15  
16  
17 Date: May 7, 2015  
Time: 1:30 p.m.  
Judge: W. Richard Lee  
Ctvm: U.S. Courthouse  
510 19<sup>th</sup> Street,  
Bakersfield, CA

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22  
23 This is a core proceeding as defined by the United States Bankruptcy Code and this  
24 Secured Creditor consents to a final Order or Judgment by the above-entitled Court.

25  
26 The above-entitled Court has jurisdiction over the subject matter of this action  
27 pursuant to 28 U.S.C. § 157(a), et seq. and 28 U.S.C. § 1334, et seq.  
28

1 PLEASE TAKE NOTICE that as specified above, WELLS FARGO BANK, N.A.,  
2 dba WELLS FARGO DEALER SERVICES (hereinafter referred to as "Secured Creditor"),  
3 a Secured Creditor of Debtor, PEDRO NAVEIRAS, JR. (hereinafter referred to as "the  
4 Debtor"), will move this Court to vacate the automatic stay entered in this proceeding as it  
5 pertains to the 2012 Toyota Corolla (V.I.N. JTDBU4EEXC9170391) (hereinafter referred to  
6 as the "property"), so that Secured Creditor's secured interest in and to the property may be  
7 repossessed or otherwise disposed of in any manner permitted by the laws of the State of  
8 California.  
9

10 PLEASE TAKE FURTHER NOTICE that there is no provision under the prevailing  
11 contractual agreement or under California State law which requires Secured Creditor to send  
12 monthly invoices or payment coupons and Secured Creditor contends that upon assignment  
13 of the contract to Secured Creditor Debtor was, in the normal course of business, informed  
14 of the identity of the holder of the contract, the amount of the monthly payment, the date  
15 upon which the monthly payment is due, and the address to which monthly payments should  
16 be sent. Additionally, Secured Creditor contends that Debtors was also admonished not to  
17 rely upon the receipt of monthly statements or payment coupons in order to make the  
18 monthly payments.  
19

20  
21 PLEASE TAKE FURTHER NOTICE that prior to filing this Motion For Relief  
22 From Automatic Stay, counsel for Secured Creditor sent counsel for Debtor, and the Trustee  
23 a notice setting forth the amounts currently past due. A true and correct photocopy of the  
24 aforementioned notice is filed separately and is incorporated herein by reference.

25 This Motion is made on the grounds that the prevailing contractual agreement is in  
26 default and that Secured Creditor is without adequate protection because Debtor is  
27 delinquent in monthly payments to Secured Creditor and Debtor is still in possession of the  
28 property.

1           Moreover, this Motion is brought pursuant to 11 U.S.C. § 362(d)(1) for "cause"  
2           based upon Debtor's failure to make the required post-Petition payments. As set forth in In  
3           Re Ellis, 60 B.R. 432, failure to make required payments constitutes "cause" to vacate the  
4           pending automatic stay provisions.

5           Accordingly, Secured Creditor cannot be assured of repayment of the outstanding  
6           balance on the account which is the subject hereof nor can it be assured of the proper  
7           operation, care, and/or maintenance of the property. Therefore, Secured Creditor lacks the  
8           adequate protection it is entitled to receive pursuant to the applicable provisions of 11  
9           U.S.C. § 362.  
10           

11           Secured Creditor will move the above-captioned Court to exercise its jurisdiction in  
12           this matter and grant Secured Creditor immediate relief from the pending automatic stay  
13           provisions which will allow Secured Creditor to take immediate possession of the property  
14           and dispose of the same during the normal course of business.

15           Secured Creditor will further move the above-captioned Court to terminate the  
16           pending automatic stay provisions to allow Secured Creditor to send to any party or parties  
17           protected by the stay under the following, applicable provisions of 11 U.S.C. § 362, and any  
18           and all notice required by State and/or Federal law, regulation or statute.  
19           

20           Pursuant to *Federal Rules of Bankruptcy Procedure, Rule 4001(d)*, a true and correct  
21           photocopy of the [proposed] Order setting forth Secured Creditor's request for relief is filed  
22           separately herewith and is incorporated herein by reference.  
23           

24           Also, Secured Creditor will move the Court to grant such other and further relief as  
25           the Court may deem just and proper.

26           This Motion is based on the Notice of Motion, the Motion, the Declaration of Magali  
27           Escamilla, filed herewith, the pleadings and papers on file in these proceedings and such  
28

1 further oral and documentary evidence as may be presented at the time of hearing on this  
2 matter.

3 WHEREFORE, Secured Creditor respectfully prays that this Court:

4 1. Vacate the automatic stay provisions effected under 11 U.S.C. § 362, as to  
5 Debtors, PEDRO NAVEIRAS, JR. and ZENAIDA ALICIA NAVEIRAS, along with any  
6 and all other stays which might be in effect, so as to allow Secured Creditor to enforce its  
7 rights and remedies under the parties' original, contractual agreement and pursuant to  
8 Debtor's default, and thereby allow Secured Creditor to gain immediate possession of the  
9 property and dispose of the same in a commercially-reasonable sale;  
10

11 2. Terminate the pending automatic stay provisions to allow Secured Creditor to  
12 send to any party or parties protected by the stay under the following, applicable provisions  
13 of 11 U.S.C. § 362, and any and all notice required by State and/or Federal law, regulation  
14 or statute;  
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16 3. Allow Secured Creditor to file or amend its unsecured claim to allow Secured  
17 Creditor to receive, or otherwise collect, any deficient amount that may exist on Debtor's  
18 account after sale of the property;  
19

20 4. That the Order hereon be binding and effective despite any conversion of this  
21 bankruptcy case to a case under any other chapter of the Bankruptcy Code;

22 5. Waive the provisions of Federal Rules of Bankruptcy Procedure, Rule  
23 4001(a)(3); and,

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6. Grant such other and further relief as the Court may deem just and proper.

Dated: March 26, 2015

LAW OFFICES OF  
AUSTIN P. NAGEL

/s/ Austin P. Nagel  
Attorneys for Secured Creditor,  
WELLS FARGO BANK, N.A.,  
dba WELLS FARGO DEALER SERVICES

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